

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

CELLCO PARTNERSHIP d/b/a  
VERIZON WIRELESS

and

Cases 21-CA-075867  
21-CA-098442

COMMUNICATIONS WORKERS OF  
AMERICA DISTRICT 9, AFL-CIO;  
COMMUNICATIONS WORKERS OF  
AMERICA, AFL-CIO

AIRTOUCH CELLULAR

and

Case 21-CA-115223

COMMUNICATIONS WORKERS OF  
AMERICA DISTRICT 9, AFL-CIO;  
COMMUNICATIONS WORKERS OF  
AMERICA, AFL-CIO

**ORDER REMANDING AND NOTICE TO SHOW CAUSE**

On March 26, 2019, the National Labor Relations Board issued a Notice to Show Cause why this case should not be remanded for further consideration under *The Boeing Co.*, 365 NLRB No. 154 (2017). The Board also asked the parties to address whether a remand would affect the Board's ability to resolve the judge's application of *Register Guard*, 351 NLRB 1110 (2007), enfd. in relevant part and remanded sub nom. *Guard Publishing v. NLRB*, 571 F.3d 53 (D.C. Cir. 2009), overruled by *Purple Communications, Inc.*, 361 NLRB 1050 (2014), to two of the allegedly unlawful work rules in the Respondents' Code of Conduct.<sup>1</sup> The Respondents filed

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<sup>1</sup> All references to the Respondents' Code of Conduct are to the versions of the rules as set forth in the Regional Director's amended consolidated complaint dated January 31, 2014.

a response opposing remand, and the Charging Parties and the General Counsel filed responses favoring remand.<sup>2</sup> The Respondents subsequently filed a notice of supplemental authority.

Having duly considered the matter, the Board has concluded that a remand of the allegations involving Sections 1.8, 1.8.2, 3.2.1, 3.7 and 4.6 of the Respondents' Code of Conduct to the administrative law judge is warranted. The Board, however, will sever and retain for future consideration the allegations that Sections 1.6 and 3.4.1 of the Respondents' Code of Conduct are unlawful and will issue a notice to show cause as to these allegations.

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<sup>2</sup> The Respondents contend that a remand is unwarranted because they have already presented arguments that the work rules at issue are lawful under the standards subsequently adopted in *Boeing*, and they assert that a remand would inject additional delay into this long-pending case. The Charging Parties favor remand to afford them the opportunity to introduce evidence disputing the Respondents' business justifications for the challenged work rules and demonstrating how the rules infringe on the exercise of employees' Sec. 7 rights. The General Counsel favors remanding Secs. 1.8, 1.8.2, 3.2.1, 3.7, and 4.6 of the Respondents' Code of Conduct because the Region has concluded that the rules are lawful under *Boeing*. The General Counsel also favors severing Secs. 1.6 and 3.4.1 of the Code of Conduct and retaining those issues for further consideration by the Board. Having considered the parties' arguments, we find, as to Secs. 1.8, 1.8.2, 3.2.1, 3.7, and 4.6 of the Respondents' Code of Conduct, that the grounds for remand are not outweighed by the goal of avoiding unnecessary delay. Accordingly, we find that the most prudent course of action is to remand the allegations related to these challenged rules to the judge for consideration in light of *Boeing*.

We shall, however, sever and retain the allegations related to Secs. 1.6 and 3.4.1 of the Code of Conduct for further consideration and issue a notice to show cause as to these allegations. The Board recently overruled *Purple Communications* and announced a new standard that applies retroactively to all pending cases. *Caesars Entertainment d/b/a Rio All-Suites Hotel and Casino*, 368 NLRB No. 143, slip op. at 8-9 (2019). In that decision, the Board held, in relevant part, that "an employer does not violate the Act by restricting the nonbusiness use of its IT resources *absent proof that employees would otherwise be deprived of any reasonable means of communicating with each other.*" *Id.*, slip op. at 8 (emphasis added). The parties to this proceeding have not had an opportunity to address whether this exception to the rule of *Caesars Entertainment* applies to the facts of this case. We shall thus issue a notice to show cause why these allegations should not be remanded to the judge for further proceedings in light of *Caesars Entertainment*.

Further, we deny the Respondents' request to consolidate this proceeding with other pending cases. See generally *Cellco Partnership d/b/a Verizon Wireless*, 365 NLRB No. 38, slip op. at 1 fn. 2 (2017) (denying motion to stay proceedings and decide matter in conjunction with other pending cases).

IT IS ORDERED that the complaint allegations involving Respondents' Code of Conduct Sections 1.8, 1.8.2, 3.2.1, 3.7, and 4.6 are remanded for the purpose of reopening the record, if necessary, and the preparation of a supplemental decision addressing the complaint allegations affected by *Boeing* and setting forth credibility resolutions, findings of fact, conclusions of law, and a recommended Order. Because Administrative Law Judge Cates has retired, we shall remand these allegations to the Chief Administrative Law Judge for assignment. Copies of the supplemental decision shall be served on all parties, after which the provisions of Section 102.46 of the Board's Rules and Regulations shall be applicable.

IT IS FURTHER ORDERED that the complaint allegations involving Sections 1.6 and 3.4.1 of the Respondents' Code of Conduct shall be severed and retained.

Further, NOTICE IS GIVEN that cause be shown, in writing, filed with the Board in Washington, D.C., on or before May 29, 2020, why the complaint allegations involving Sections 1.6 and 3.4.1 of the Respondents' Code of Conduct should not be remanded to an administrative law judge for further proceedings consistent with the Board's decision in *Caesars Entertainment*, including reopening the record if necessary. Any response should also address whether remand to the judge would be appropriate for further proceedings in light of *Boeing*, including reopening the record if necessary. Any briefs or statements in support of the response shall be filed on the same date.

Dated, Washington, D.C., May 15, 2020

By direction of the Board:

Roxanne L. Rothschild  
Executive Secretary